UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Bair Hugger Forced Air Warming Devices Products Liability Litigation	File No. 15-MD-2666 (JNE/FLN)
	Minneapolis, Minnesota August 28, 2017 9:59 a.m.

BEFORE THE HONORABLE FRANKLIN L. NOEL
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(MOTION HEARING)

APPEARANCES

For the Plaintiffs:
MESHBESHER & SPENCE
Genevieve M. Zimmerman, ESQ.
1616 Park Avenue
Minneapolis, MN 55404

LEVIN PAPANTONIO, P.A.
Ben W. Gordon, Jr.
316 S. Baylen Street
Suite 600
Pensacola, FL 32505

For the Defendant:
BLACKWELL BURKE P.A.
Monica Davies, ESQ.
Bridget Ahmann, ESQ.
431 South Seventh Street
Suite 2500
Minneapolis, MN 55415

Court Reporter:
STACI A. HEICHERT
RDR, CRR, CRC
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography; transcript produced by computer.

P R O C E E D I N G S

IN OPEN COURT

THE COURT: Okay. This is in Re. Bairhugger Forced Air Warming Device Product Liability Litigation; 15-2666. Let's get everybody's appearance on the record. For the plaintiff.

MR. GORDON: Your Honor, Ben Gordon for the plaintiffs.

MS. ZIMMERMAN: Good morning, Your Honor. Genevieve Zimmerman for the plaintiffs.

THE COURT: Defendants.

MS. DAVIES: Good morning, Your Honor. Monica Davies on behalf of defendants.

MS. AHMANN: Bridget Ahmann on behalf of defendants.

THE COURT: Okay. So we're here for a hearing on the defendant's motion for disclosure of confidential communications with treating physicians. The moving party is defendant, correct?

MS. DAVIES: That's correct.

THE COURT: Who's up, Ms. Davies?

MS. DAVIES: Yes. Thank you, Your Honor. I would like to begin by addressing any confusion that there may be regarding what it is we're seeking, the context in which it arose, and the parties meet and confer efforts in that

regard. As the Court is aware, there has been a fair amount of discussion between the parties, as well as with the Court, in the context of questions regarding what communications or what contact defendants are allowed to have with treaters, whether they should be able to communicate with plaintiffs' treating physicians, whether for purposes of scheduling depositions or more substantive discussions.

Plaintiffs have maintained from the beginning, and my understanding is that they continue to maintain, that the treaters are basically off-limits for defendants outside the context of a formal deposition. We disagree, and we've had discussions about the legal application of whether it be under the physician-patient privilege or the Court's analysis of *Shady* Grove and the extent to which the Minnesota specific statute would apply here. We recognize that those are difficult issues and sensitive issues in light of the plaintiffs' medical conditions.

So in preparing to bring this motion before the Court, we've attempted to narrow what we're looking for so that we can best prepare, efficiently prepare for the depositions that we're going to have coming up in a very short amount of time, and that is simply what documents and information have the treaters been provided by plaintiffs or their counsel. We're not looking for substantive contact

with the treaters. We're not looking to get into any specifics regarding the plaintiffs' medical condition outside of what would normally be appropriate in the context of a deposition in this type of case.

We know from the *Walton* litigation that plaintiffs' counsel has previously at least attempted to educate treaters regarding their theories of the case and has worked with Dr. Augustine to try to find documents and literature that would be helpful to those theories. We can only assume that they would attempt to do the same thing here. We simply want to know what -- we want a level playing field. We want to know what it is that they've been provided so that we can adequately prepare for depositions going in.

Leaving aside other disputes that we may have over over the scope or the applicability of the physician-patient privilege and proceedings such as this, we don't think there's any basis to claim that it would apply to those sorts of communications. As I mentioned, and as the Court is well aware, we have a lot of discovery and a lot of depositions to get done in a very short timeframe and the treaters are on that list and of anybody who have the limit -- the most limited schedules in terms of what time we're going to be allowed to have with them.

We've asked for the information before, despite

plaintiffs' claim in their opposition that we haven't --

THE COURT: So where -- so let's talk about that.

MS. DAVIES: Sure.

THE COURT: Because that does appear to be a major dispute. What -- where do I find or what document requests or what interrogatory or what discovery device were these items requested?

MS. DAVIES: In our bellwether case-specific document request to each plaintiff. And substantially identical requests were served on everybody. There might be some differences in numbering between each different case, but I have, for example, the requests that were served upon Julie Kamke, and we asked produce all documents and/or communications, including correspondence or other written records, provided by you, your agents, or your attorneys to any witness in this litigation, including expert witnesses and nontestifying experts who are consultants, but it clearly encompasses any witness, and we would certainly maintain that that would include their treating physicians who were very likely to testify here.

THE COURT: So what were you reading from again, so that's the interrogatory -- or the document request to who?

MS. DAVIES: Julie Kamke, the first bellwether case that's teed up.

THE COURT: Okay. And what document request no. was it?

MS. DAVIES: It is request No. 15.

THE COURT: Okay.

MS. DAVIES: And I brought with me, just in case, I brought with me copies of our response -- or our requests as well as the responses served by Ms. Kamke.

THE COURT: Okay. And what was the response?

MS. DAVIES: They objected on the grounds of -- or she objected on the grounds of work product privilege and referred us to expert reports.

THE COURT: Okay.

MS. DAVIES: And, you know, quite frankly, we recognize, as is the case with so many of these issues and these motions, there are probably lot a different procedural mechanisms that we could use to bring these issues before the Court. We were in the context of discussions about the applicability of the, you know, the privilege that applies to plaintiffs' treaters and the extent to which we can communicate with them. We wanted to talk to them ourselves. The plaintiffs have taken the position we can't. We disagree, but we are trying to find a way through it. We're not going to talk to them ourselves and ask for this information, then you give it to us, plaintiffs, please.

We're -- we didn't -- we weren't looking to tee up

any kind of discovery fight or motion to compel. We can certainly go down that road if we have to. But the issue that we're here before the Court on we think is very discrete and can be dealt with in a much more efficient manner, and that's simply whether we're entitled to at least know what documents and information are being provided to these witnesses in advance of their depositions.

And with that, unless Your Honor has any other questions, I think --

THE COURT: I guess the only other question I have is --

MS. DAVIES: Sure.

THE COURT: -- if we do get into the question of privilege, why doesn't Rule -- Federal Rule 501 govern this whole thing?

MS. DAVIES: I would submit that -- I -- we're talking about discovery versus evidence and the admissibility of it. I mean, regarding the privilege itself, we would maintain that because of the nature of these cases and the fact that it is the plaintiffs' medical condition that is at the heart of it that they have waived that privilege.

And from a procedural standpoint, we're simply looking for the same access that Rule 26 would otherwise provide. So our position with respect to the confluence of

the federal rules and the Minnesota physician privilege statute is that, procedurally, we should be looking at Rule 26 in terms of what access to discovery and information we have, and to the extent that we need to have evidentiary fights based on what information is discovered, we could cross that bridge when we come to it.

THE COURT: Okay. Thank you.

MS. DAVIES: Thank you.

MR. GORDON: Good morning, Your Honor.

THE COURT: Mr. Gordan.

MR. GORDON: Ben Gordan for the plaintiffs. Thank you. Let me say first, Your Honor, I'm -- counsel for defense indicated that they were -- there was some confusion that she was hoping to clear up over this matter, and I remain a little confused, although I understand, based on her comments, that it seems to be a little narrower, perhaps, than some of the statements in their memorandum. But if I can just cut right to the -- well, let me say preliminary, in terms of the meet and confer statement, which I understand to be a rule that is required that we meet and confer on these issues, I assume or I infer from her comments, counsel's comments, that the meet and confer is to be inferred here from the request to produce on case specific matters to Ms. Kamke that she mentioned relating to other witnesses, information from other witnesses.

I'm not sure that's a fair characterization, I'm not sure it's a fair inference, and the statement that was filed in the court was very clear that there was a meet and conferral on this specific issue of disclosure, specifically of documents that counsel may have given to plaintiffs' treating physicians. That hasn't happened. There's been no such meet and confer. I checked the transcript last week carefully and cited in my response memorandum to portions of it that might seem to cover that area, and I didn't see anything that could obliquely be construed to ask us for that information. I don't believe there's been an appropriate request.

But to the extent that the request, No. 15, that Ms. Davies mentioned is construed to include treating physicians, I would argue, Your Honor, that those witnesses, as case law in this district has pointed out, including the *Baycol* MDL decision, are very different from ordinary fact witnesses and the fact that Minnesota statutes specifically and Minnesota Rules of Civil Procedure specifically create that substantive right to privilege of those conversations and those discussions between plaintiffs' counsel and treating physicians for the plaintiffs in the case and the procedure that defines the parameters of any such waiver. And to that point, there has been a limited waiver in Kamke and Nugier and the other cases, but it is very definite and

very limited, and, of course, prescribed. And given Minnesota rules on that, I don't believe it can be reasonably said that plaintiffs have waived their rights under Minnesota substantive law.

And so while I'm happy to get into the question of whether Federal Rule of Evidence 501 should govern here and whether Minnesota law creates a rule of decision that I believe it does, Your Honor, that's been recognized by this district, I believe preliminarily the defendant's motion is improper and that there hasn't been a proper meet and confer that's happened and we haven't been given an appropriate opportunity to respond to a specific request for such communications.

But that said, given expediency and the efficiencies that we all know and talk about with MDLs, I'm certainly prepared to say, Your Honor, while I don't know that it's a fair assumption, as counsel said, she said we only can assume that conversations that took place in the underlying *Walton* case have -- or conduct that may have taken place in that case may have taken place in this case, I think if we want to, you know, jump that hurdle and talk about the substance of that, it's important to recognize on the merits that any conversations that counsel has with treating physicians are substantively protected under Minnesota privilege law, under Statute 595.02.

And that counsel talked about wanting to be able to be on an even playing field, the fact is, and the cases talk about this, it's not an even playing field with respect to whether or not Minnesota law recognizes a statutory privilege for these conversations, and that right is in violate, and our -- the duties for that, the reasons for that law and that duty are talked about in great detail in the *Baycol* decision and in other decisions.

And if we get into talking about other MDLs and other minority positions like the *Zimmer NexGen* case, those cases are very specifically limited to the confines and the specific facts of those cases in terms of trying to find treating physicians for -- or talk about physicians for expert witnesses. I don't think we're there yet.

But my basic, you know, concluding response, Your Honor, at this point is that Minnesota law governs here and that there shouldn't be any encouraging under *Shady Grove* into that law.

THE COURT: So why, other than the cases in Ramsey County that are assigned to Judge Leary, why does Minnesota law apply to any of these cases? In other words, as I understand Rule 501, it says in a civil case where state law provides the rule of decision, that's the privilege rule that would apply, and so don't we have to look at all 3,500 cases and figure out what state law is going to govern

in each of those cases to determine what the privilege law is in each of those cases?

MR. GORDON: I think ultimately that's true, Your Honor. I think it is a state by state analysis, and --

THE COURT: And I would assume every state has some kind of waiver notion for privilege, and why hasn't it been waived in every state by reason of the fact that you've put your clients' medical condition at issue and therefore a treating physicians' opinion about that has to be explored, doesn't it?

MR. GORDON: Well, the opportunity to explore it, Your Honor, as the cases discuss, is at -- is in the deposition setting, and those states like Minnesota specifically define what the limits of such limited waivers are. And in this instance, it is very clear and specific what the plaintiffs have waived and what they have not waived.

And, again, those decisions, including the *Baycol* decision, the *NHL* decision in this district, talk about the policy reasons for that, and it's bound up in the sanctity of the privacy of the patients' medical records and the relationship with the patient and the physician and the protections built in, both for the patient and the physician under that law. And yes, that varies state by state. And that is -- I realize we are in an MDL setting, but there

have been many decisions, Your Honor, from *Vioxx* and others forward, all the way most recently with the *Xarelto* decision, that speak specifically to how that can be handled. And if there are situations where there need to be conversations between defense counsel and the plaintiffs' treating physicians, number one, they should be limited to the deposition setting. But number two, if there is a stated reason by the defendants of need for something beyond that, that can be done in a way that comports with state law. That's something the Court can look at and other courts have.

And specifically, in the *NextGen* case by Judge Pallmeyer, the judge very carefully limited to the specific facts of that case what the basis for her opinion was that there should be these limited conversations with plaintiffs' treating physicians on an ex parte basis. And Your Honor, factually it's important there because they were looking at a case where there were knee surgeons who were very few in number, I think she mentioned 250 perhaps the defendants argued might be the total number of available specialists in knee surgery. So the defense argument there, very specifically, which 3M has not made here, was that they had to have some ability to reach out to treating physicians who could be potential experts for them; whereas here, Your Honor, there are thousands of an anesthesiologists,

biosafety engineers, orthopedic surgeons, and others who 3M could reach out to and, in fact, has, to be experts in this case. In fact, Your Honor, 3M has named almost twice the number of expert witnesses that plaintiffs have in this case.

There's been no claim, I don't think there can be a claim, that 3M has some necessity to have to reach out to plaintiffs' treating physicians that would give them -- you know, that they have a need for expert witnesses that would give them a reason to ask the Court to create an exception or to limit the scope of the physician-patient privilege recognized by Minnesota Statute 595.

THE COURT: And document request 15 in the Kamke case, in your estimation, only goes to what?

MR. GORDON: Your Honor, I don't have the specific language in front of me. I tried to write it down. And I would perhaps have to take a look at it if counsel has an extra copy.

(Counsel conferred.)

MR. GORDON: As I recalled, let me -- if you may indulge me for one moment, Your Honor.

THE COURT: Sure.

MR. GORDON: All communications, including correspondence, other written records provided by you, your agents, or attorneys to any witness in this litigation. I

would -- including expert witnesses and nontestifying experts or consultants. The fact that plaintiffs' treating physicians are a special, unique type of witness in this case, as recognized by Minnesota substantive law -- and I forget which case it is, Your Honor. I have to go back and look. I believe it's *Baycol*, probably others, that discussed that and the rationale for those witnesses not being treated as ordinary fact witnesses. So in the case of other third-party witnesses, this privilege wouldn't apply.

The reason that we believe this is -- this request doesn't apply to plaintiffs' treating physicians is that they have this privilege recognized by the law and that is to be protected in violate under the case law, unless there is some reason for them to get around that privilege.

And, again, we would argue that *Shady Grove* is inapplicable here, that under Erie analysis, that if this is not outcome determinative, Your Honor, it is at least outcome influential or impactful. And the fact that in the case law, including the Erie analysis under the *NextGen* decision, talks at great length about the reasons that it should be -- determined to be outcome determinative or not, here, Your Honor, it is bound up in the patients' treatment and core medical claims in this case. And so to say that federal procedure is all that we're talking about here I think misses the gravamen of the discussion in the *Baycol*

cases or the other cases. I think the core discussion concerning Minnesota procedure makes clear when they talk about 35.04, Minnesota Rule of Civil Procedure, that it's more than mere procedure. It's more than routine procedure. We're talking about a procedure that goes to the very heart of the plaintiffs' medical treatment which is fundamentally where their claims live and die.

THE COURT: But as I understand it, the request and plaintiff -- and defendant contend that this request No. 15 encompasses what they're looking for here, which is simply communications from plaintiffs' lawyer to the treating physician witness, so it doesn't really have anything to do communications between the patient and their physician or between the physician and the plaintiff. It's simply the lawyer's communication to the witness. And by my reading of the whole Erie line of cases and the Federal Rules of Civil Procedure and the Federal Rules of Evidence, this is all governed by Rule 501, which, by its terms, then says you go look at the state law to determine what the privilege is. And so what law governs Kamke and Newger?

MR. GORDON: Well, Your Honor, I -- obviously I -- the state law for those plaintiffs would be the states from which they hail, and in the case of Ms. Kamke it's Wisconsin and in the case of Mr. Newger it's Florida. And I agree that the laws of those states would govern under Rule

501 and create the rule of decision -- pardon me -- for those states, and, you know, so to the extent that we need to look at Florida, I think we can look at the Florida analysis. The statute I think is substantially similar in terms of the protection to patients' communications through agents or otherwise but physicians.

And on that point, Your Honor, I think to the extent that this request, and, again, I'm not sure I read it as broadly or specifically as requesting communications between patients and their agents and physicians, but in this case, we, as attorneys, who may have had -- and without admitting for the moment, Your Honor, that we've had any such written communications with any doctor in the Kamke or Newger cases, if we have or if we had, I -- our argument would be that we -- those would be protected, and to the extent that they are concerning the patient and their relationship with that physician, the communications would be protected just as though they were communications by the -- from the patient to the physician themselves.

THE COURT: And is it your contention that the only -- or that the extent of any waiver is set forth fully in the HIPAA authorizations that each client signed with their plaintiff fact sheets?

MR. GORDON: Yes, Your Honor. I mean, unless, without knowing as I stand here now, there's any additional

room for discussion of waiver under Wisconsin or Florida law, then yes, I believe those waivers are limited on their face, they were agreed to by the parties, and that counsel should not be allowed to seek discussions between patients and their physicians or patients' representatives and their physicians outside of the deposition context.

THE COURT: And where do I find the text of these authorizations?

MR. GORDON: I, Your Honor, I have those, and I don't believe I brought hard copies, but I can certainly -- they were --

THE COURT: Or they're all the same, correct, for each plaintiff? I mean, it's a form thing that is part of a pre-trial order?

MR. GORDON: Yes, Your Honor. I'm trying to recall. My inclination is to say yes, Ms. Zimmerman is helping, but I thought I recalled on Newger and Ms. Kamke there was some difference, am I mistaken?

MS. ZIMMERMAN: I don't believe so. Sometimes individual hospitals require, for example, the Mayo Clinic has its own mandated authorization, but the authorizations mandated in this MDL I believe appear as exhibits to pre-trial order No. 14. I think that's the pretrial order.

MR. GORDON: That's right.

THE COURT: Okay.

MR. GORDON: And I have copies, Your Honor, electronically that we can pull up and e-mail to the Court if you wish.

THE COURT: And -- no, that's okay. If it's an exhibit to pre-trial order 14, I can find that. I'll confer with defense counsel and see if she agrees.

And what is the Florida statute section that's the equivalent of the Minnesota statute that we were talking about?

MR. GORDON: One moment, Your Honor. I can give that to you. And then you're going to ask me for Wisconsin next, and I'm --

THE COURT: Probably. But since you're from Florida, I assumed you might have had this one on the tip of your tongue.

MR. GORDON: And I should have, Your Honor. It's sad that I'm more familiar with Minnesota law on this right now than I am Florida. But because of analysis that was recently done, I do recall the discussion on Florida, but the statute number is escaping me right at this moment. I can have it for you. It's, I'm sorry, 456.057, paren 8.

THE COURT: 456.057, paren 8?

MR. GORDON: Yes, Your Honor.

THE COURT: Okay. Okay. Anything else?

MR. GORDON: Not at this time, Your Honor. Other

than to say that, again, I realize time is of the essence. You know, I do think it's a bit of an unusual position for us to be in procedurally when I don't believe we've truly had a request. If you look at just the language of their motions, they ask for disclosure of documents that they haven't specifically requested in our view.

THE COURT: And in response to, for example, Kamke, No. 15, was anything produced or was it just an assertion of the privilege and no further documents or was one of those --

MR. GORDON: I'm going look to Ms. Zimmerman.

THE COURT: -- despite the warning or despite the privilege, blah, blah, blah, we now give you these?

MR. GORDON: With respect to 15 specifically, I'm hoping Ms. Zimmerman knows, Your Honor.

MS. ZIMMERMAN: Your Honor, we asserted a broad objection at the beginning of all of the responses that we made. We answered and we referred to the expert reports that were produced prior to the production of these particular discovery responses.

And again, we haven't met and conferred such that a motion to compel would be appropriate here. I mean, we didn't know until this morning which requests it was they thought that we had not been appropriately responsive to.

THE COURT: Okay.

MR. GORDON: And that's really -- thank you, Ms. Zimmerman. The point is that if we'd had a real opportunity to meet and confer specifically on the requests they were talking about, I wasn't sure where that was coming from. We didn't talk about it last week leading up to this so I didn't know exactly. And that request, 15, I mean, I think our response is that there's nothing that's not non-privileged that's responsive to that request.

THE COURT: Okay.

MR. GORDON: Thank you, Your Honor.

THE COURT: Ms. Davies, anything else?

MS. DAVIES: Yes, just very briefly, if I could. I'll start at the end. The reason that we brought up the discovery request in the first place is only because in responding to our motion, plaintiffs took the position that this -- that we had never asked for this in discovery. As I mentioned, we're not looking for a discovery fight. We're hoping to avoid one. And we think this issue is much more discrete than maybe what we've even been talking about here. So at the risk -- you know, to the extent that our motion papers were not clear, I apologize to the extent that's the case. The parties have different interpretations of the scope of the privilege, and we recognize those are sensitive, difficult issues and that time is of the essence.

What we're trying to do now, and what we've

requested in our motion, is, in our view, a much narrower request than what we originally asked for and met and conferred on with respect to contact with treaters. And at this point, we're not looking to reach out to treaters directly. We won't contact them without -- outside of getting depositions on the calendar and communicating with them in the deposition, we're not looking to have any kind of substantive communication with them. We're not even asking for documents or information relating to any specific plaintiff or their medical condition as it might relate to communications with a particular treater.

What we want to know before we go into depositions is what, if any, documents that plaintiffs' counsel have provided these treaters, whether in an attempt to educate them or otherwise; for example, if plaintiff's counsel were to, and I'm using this only as an example, I have no reason to believe this is or is not the case, but if plaintiffs' counsel were to hand a copy of the McGovern study to one of these treaters or any number of the articles or other literature put together by Dr. Augustine, I can't fathom a basis on which the physician-client privilege -- the physician-patient privilege would even come into play, and I can't imagine any reason why that wouldn't be information that we would be entitled to prior to going to the deposition and potentially run the risk of being back before

Your Honor in the context of additional deposition time or discovery.

THE COURT: Is it your contention that the waiver of whatever physician-patient privilege might exist is broader than the HIPAA authorizations that each plaintiff signed in connection with their plaintiff fact sheets?

MS. DAVIES: I have to confess, I'm not -- I don't have the language of the HIPAA authorization top of mind, but our position is that because the plaintiffs have put their medical condition at issue in these proceedings that the privilege is waived, we're entitled to take discovery from physicians, from treaters, from the hospitals, from anestheologists, and we have -- we've got the plaintiff's medical records. That, in our view, is not what the issue is here. It's simply, you know -- and again, we're taking a step back from our position that we should be able to have conversations with these treaters, and we would view that because of the plaintiffs putting their medical condition at issue in this case, we would take the position that we would otherwise be entitled to speak with those treating physicians regarding plaintiffs' medical condition and the facts and factors relevant to the damages that they're claiming in these proceedings, but we're not -- we've -- we've stepped back from that. We're not asking for that. We're not asking for any patient specific

or plaintiff specific information at all at this point.

THE COURT: Is Ms. Zimmerman correct that the HIPAA authorization is found attached to pre-trial order No. 14?

MS. DAVIES: I believe that is the case. I can't -- I have no reason to disagree with it at this point, but I would have to confirm.

THE COURT: And do you happen to know what the Wisconsin statute is that's equivalent, if there is one, to Minnesota 595.02?

MS. DAVIES: I do not.

THE COURT: And do you whether Mr. Gordon has correctly identified the Florida statute?

MS. DAVIES: I have -- again, I have not looked into the Florida -- that provision, but I have no reason to dispute that he did.

THE COURT: Okay. Anything else?

MS. DAVIES: No.

THE COURT: Okay.

MS. DAVIES: Thank you.

THE COURT: Thank you.

MR. GORDON: Can I respond briefly, Your Honor?

THE COURT: Only if you're going to give me the Wisconsin statute.

MR. GORDON: We are working on it as we speak,

Your Honor.

THE COURT: All right. Here's what we're going to do. Before the day is out, meet and confer and see if you can reach agreement now that you know what document requests they say you haven't complied with and let me know by close of business if you've reached an agreement, and if you have not, I will issue an order ruling on the motion that is before me.

MR. GORDON: Your Honor, if I may, thank you. In anticipation of possibly not being able to work it out and while we're waiting for the Wisconsin statute, can I give you one more citation to consider when you make your ruling?

THE COURT: One more citation to what?

MR. GORDON: For the proposition in response to what Ms. Davies just said a moment ago about their -- it being unfair essentially for them not being able to speak with the physicians and know what the physicians --

THE COURT: I think I understand that issue and understand everybody's position. What I'm more interested in is exactly what state's privilege laws might actually I might have to learn and talk about.

MR. GORDON: Understood, Your Honor. We'll find that for you hopefully momentarily.

THE COURT: All right. We are in recess.

MR. GORDON: Thank you, Your Honor.

MS. DAVIES: Thank you, Your Honor.

(Proceedings concluded at 10:31 a.m.)

* * *

I, Staci A. Heichert, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: *s/ Staci A. Heichert*

Staci A. Heichert,
RDR, CRR, CRC